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Attorneys for (Proposed) Intervenor-Defendants

CALIFORNIANS TO DEFEND THE OPEN PRIMARY
and INDEPENDENT VOTER PROJECT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PEACE AND FREEDOM PARTY OF
CALIFORNIA, *et al.*,

Plaintiffs,

vs.

Dr. SHIRLEY N. WEBER, CALIFORNIA
SECRETARY OF STATE,

Defendant.

CALIFORNIANS TO DEFEND THE
OPEN PRIMARY and INDEPENDENT
VOTER PROJECT,

(Proposed) Intervenor-Defendants.

Case No. 4:24-cv-08308-MMC

**INTERVENOR-DEFENDANTS'
ADMINISTRATIVE MOTION
SEEKING LEAVE TO FILE BRIEF
IN SUPPORT OF MOTION TO
DISMISS [Civil L.R. 7-11]**

COURTROOM: 7 (19th Floor)
JUDGE: Hon. Maxine M. Chesney

NOTICE OF MOTION & MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Please take notice that Proposed Intervenor-Defendants CALIFORNIANS TO DEFEND THE OPEN PRIMARY and INDEPENDENT VOTER PROJECT hereby move this Court for an order permitting Intervenorors to provisionally file the motion submitted herewith (and the corresponding Request for Judicial Notice, also filed herewith), so that Intervenorors' position may be heard in conjunction with the motion to dismiss filed by Defendant Secretary of State Weber, anticipated to be heard on the same day as Intervenorors' motion to intervene, filed this day and set for hearing on March 28, 2025.

Alternatively, Intervenorors request that that these documents be accepted as an amicus brief in support of the Defendant's motion. A motion to intervene is filed simultaneously with this motion and is scheduled to be heard at the same time as Defendant's motion.

This motion is based on the following documents: this Notice of Motion and the attached Points & Authorities; and all the other papers, documents, or exhibits on file or to be filed in this action, and the argument to be made at any hearing on the motion ordered by the Court.

Dated: January 31, 2025

Respectfully submitted,

NIELSEN MERKSAMER LLP

By: /s/ Christopher E. Skinnell
Christopher E. Skinnell

Attorneys for Intervenor-Defendants
CALIFORNIANS TO DEFEND THE
OPEN PRIMARY and INDEPENDENT
VOTER PROJECT

MEMORANDUM OF POINTS & AUTHORITIES

As discussed more fully in the motion to intervene filed simultaneously herewith, Proposed Intervenor-Defendants CALIFORNIANS TO DEFEND THE OPEN PRIMARY (“CADOP”) and INDEPENDENT VOTER PROJECT (“IVP”) are the chief proponents of California’s Proposition 14, the Top Two Candidate Open Primary Act, adopted by the State’s voters in June 2010, at issue in this case. Proposition 14 has previously been subject to numerous legal challenges—this is now the seventh such challenge—and CADOP and IVP have been permitted to intervene in each of the prior cases to defend the measure.¹ Of particular note, they participated as Intervenor-Defendants in [*Rubin v. Padilla*, 233 Cal. App. 4th 1128 \(1st Dist. 2015\)](#), which was brought by the same three “minor” parties that are plaintiffs in this action, raising essentially the same claims as this case does.

CADOP and IVP have sought the parties’ stipulation to intervene in this case as well, and while the Secretary of State does not oppose intervention, Plaintiffs do. Accordingly, CADOP and IVP have filed a motion to intervene simultaneously herewith. Having conferred with the parties regarding all counsel’s availability to attend motion hearings, that motion to intervene is set for hearing on March 28, 2025.

March 28 is also the date, however, on which Defendant proposes to set for hearing a motion to dismiss this case. Intervenor-Defendants understand that motion will be filed today, pursuant to the prior stipulation of the parties. (*See* ECF No. 11.) Intervenor-Defendants hereby respectfully request that the Court allow Intervenor-Defendants to provisionally file a motion to dismiss as well, so that Intervenor-Defendants’ views on the merits may also be considered at the March 28 hearing. If the motion to intervene is granted,

¹ *See* [*Clark v. Superior Court*, 2010 Cal. App. Unpub. LEXIS 1911 \(Cal. Ct. App. 3d Dist. Mar. 16, 2010\)](#); [*Field v. Bowen*, 199 Cal. App. 4th 346 \(2011\)](#); [*Chamness v. Bowen*, 722 F.3d 1110 \(9th Cir. 2013\)](#); [*Rubin v. Padilla*, 233 Cal. App. 4th 1128 \(1st Dist. 2015\)](#); [*Brown v. Bowen*, Case No. 2:12-cv-05547-PA-SP \(C.D. Cal.\)](#); [*Soltysik v. Padilla*, No. CV 15-07916-AB \(GJSx\), 2015 U.S. Dist. LEXIS 195316 \(C.D. Cal. Dec. 11, 2015\)](#).

1 as it has been in every prior case, then Intervenorors will not be excluded from full
2 participation on the merits. If intervention were to be denied, then the submission of
3 this motion would be moot.

4 Alternatively, Intervenorors' request that the Court accept the proffered motion,
5 and the supporting Request for Judicial Notice, as an "amicus" brief in support of the
6 Secretary of State's anticipated motion to dismiss, and that the Court permit
7 Intervenorors to participate in the March 28 hearing on the merits.

8 Respectfully submitted,

9 Dated: January 31, 2025

NIELSEN MERKSAMER LLP

10 By: /s/ Christopher E. Skinnell
11 Christopher E. Skinnell

12 *Attorneys for Intervenor-Defendants*
13 CALIFORNIANS TO DEFEND THE
14 OPEN PRIMARY and INDEPENDENT
15 VOTER PROJECT
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